IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1209 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODBHAI V GUJARATI

Versus

G S DOTHRE

Appearance:

MR RN SHAH for Petitioner

MS PJ DAVAWALA for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/12/2000

C A V JUDGEMENT

The present petition has been filed by the petitioner above named, under Article 226 of the Constitution of India, for appropriate writ, order or direction for quashing and setting aside the order passed

by the second respondent on 19.1.1990 and confirmed by the Appellate Authority, by order dated 21.6.1990 and also confirmed by the Review Authority by order dated 10.7.1991 at Annexures 'E', 'F' and 'G' to the petition respectively.

2. The facts of the case may be briefly stated as follows:

The present petitioner was appointed in the employment of Dena Bank. He was also promoted to the Cadre of Officer and by order dated 24.8.1987, he was appointed as Branch Manager in Mota Pondha Branch in Valsad region. It seems that he actually joined the said Branch, but his predecessor in office was allowed to work there for some time. Therefore, the petitioner actually commenced the work as Manager of the said Branch on 13.10.1987. As per the case of the department against him, some applications were received on the previous day of his effectively resuming as the Manager of the Branch for extending loans for the purchase of buffaloes. It seems that it was the policy of the Dena Bank at the relevant point of time to advance loans to the persons proposing to purchase buffaloes. Accordingly an amount of Rs. 3,000/- was permissible as loan for each buffalo and one single candidate could get loan upto Rs.30,000/- in all for the purchase of 10 buffaloes.

3. Now as per the case of the respondents, 15 such applications were pending, which were received on 12.10.1987 when the petitioner resumed as effective Branch Manager of the said Branch on 13.10.1987. He sanctioned loans to those 15 persons, each getting Rs.30,000/- for the purchase of buffaloes as aforesaid. The respondents have contended that the petitioner did not follow any rule or regulation or guidelines for advancing loans to those persons and as such the loan was sanctioned without any procedure being followed. Therefore, a charge-sheet was issued to the petitioner on 11.3.1988 a copy whereof, has been annexed at Annexure 'A', page 12 to the petition. It would be worthwhile to refer to the charges levelled against the petitioner in the said chargesheet at Annexure 'A' to the petition dated 11.3.1988. The same are reproduced for ready reference as follows:

"1. That on 13th October, 1987, i.e. on the very next day after your taking over the charge of Branch Manager, Mota Pondha, you disbursed the loan of Rs.30,000/- each to 15 borrowers (whose identity could not be established by you) for

purchase of 10 buffaloes by each of the said borrowers, whose loan applications were received by you on 12th October, 1987. The names of the said borrowers, their addresses as furnished to the Bank and amount of loan sanctioned are given in Annexure - I.

2. While sanctioning and disbursing the said loans, you have violated our Bank's norms and also not followed the rules procedure normally ought to have been followed in similar circumstances, some of such violations have been illustrated below.

a) The address/residential status and other details mentioned in applications of the said 15 borrowers have not been vouched/verified by you from local panchayat or during spot verification visit etc. before entertaining all 15 loan applications for sanction and disbursement, though you have stated to have done so.

b) On the said 15 loan applications, neither any of the applications bears attestation about thumb impression of applicants nor carries photographs of concerned borrowers duly certified by you although all of them are stated to be illiterate.

c) You did not take assistance of RSC officials or Regional Authority for scrutinizing the 15 loan applications.

d) Similarly you also did not verify whether the persons named Jora Mavji Rabari exists or resides at given address and whether he is capable to supply 150 buffaloes to the said 15 borrowers.Later on it was also found that the said supplier is also fictitious.

e) The animal health certificates dated 4.10.87 and 11.10.87 issued by Dr. H P Patel of Vapi is for 99 buffaloes only. Required certificate for remaining buffaloes is not taken by you.

f) The said 150 buffaloes claimed to have been purchased by the said 15 borrowers were never available at the given addresses for spot inspection.

g) No margin money has been collected from the said 15 borrowers before disbursement of said

loan on 13.10.87. Instead of directly collecting margin money from the said borrowers, the margin money amounting to Rs.1.50 lacs for said 15 borrowers is adjusted out of withdrawal on 13.10.87 of Rs.4.70 lacs by seller named Shri Jora Mavji Rabari from his S.B. A/c. no.2208 wherein the disbursement amount of Rs.6.00 lacs of said loan was credited on the same day.

h) In such commercial dairy advances, two independent guarantors are required to be taken for each borrower. In these cases no such guarantors are taken.

3. The SB a/c. No.2208 is opened on 13.10.1987 in the fictitious name of Shri Jora Mavji Rabari without introduction.

4. The seller names Jora Mavji Rabari is fictitious one and the payment of Rs.6.00 lacs disbursed to him without authority of all 15 loanees to the effect that they have received delivery of 10 buffaloes each.

5. Your above said acts if proved, will constitute the following acts of misconduct.

i. Lack of honesty/integrity/devotion/ diligence in discharge of your duties and/or,

ii. Committing fraud on he bank, and/or

iii. Doing acts prejudicial to the interest of the Bank and/or;

iv. Acts involving or likely to involve the Bank into risk of heavy loss, and/or

v. Acts unbecoming of a Bank Officer.

6. The above acts of misconduct if proved against you, shall reflect contravention of Regulation 3(1) read with the regulation 24 of Dena Bank Officers Employees (Conduct) Regulations 1976 punishable under Dena Bank Officers/Employees (Discipline & Appeal) Regulations 1976.

7. You are hereby required to submit your explanation in writing within a period of ten days from the receipt of this charge-sheet,

failing which it will be presumed that you have no explanation to offer and the matter will be dealt with accordingly.

8. Pending enquiry into the charges levelled against you in this charge sheet, in terms of Regulations 12.1 of Dena Bank Officer Employees' (Discipline and Appeal) Regulations 1976, you are hereby suspended from the services of the Bank with immediate effect."

It seems that the petitioner was called upon to submit his explanation to the said charges. In the mean time, it seems that the facts were noticed by the higher office and probably, the message was conveyed to the lower level also. With the result, the persons who had taken the said amount as loan, redeposited the said amount with the bank. There is no serious dispute about the same.

4. The persons to whom the loan was sanctioned and the amounts were paid, have been enlisted at Annexure 'I' to the charges and the said annexure is placed at page 16 to the petition.

5. It seems that on 7.4.1988, the petitioner addressed a letter to the Zonal Manager of the Dena Bank and requested him to allow him to inspect the records of the Branch for enabling him to reply. He seems to have addressed another letter to the Regional Manager of the Dena Bank. These two letters have been placed at Annexure 'B' at pages 17 and 18 respectively. It seems that a reply was sent on 10.6.1988 at page 20 to the petition saying that the xerox copies of bank records need not be given to the petitioner at the time of charge-sheet, but the petitioner will be given full opportunity at relevant time. That in support of the charges, xerox copies of such documentary evidence will also be furnished to the petitioner by the Presenting Officer. This would mean that the documents were not provided to the petitioner at that particular stage before commencing of enquiry. The petitioner addressed another letter dated 17.6.1988 at page 21 to the petition. The said letter was addressed to the Regional Manager, again for the supply of documents for enabling him to prepare reply. It seems that copies were not supplied and it has been made clear on behalf of the respondents that as per the rules framed by the respondent bank, documents can be provided only at the commencement of the enquiry and no before the same. Accordingly, the documents were not supplied at that particular time. Thereafter, as per the case of the petitioner, the documents were not supplied. As per the

respondent, the documents were supplied at the stage when the enquiry commenced. Any way, the enquiry had commenced and concluded and the petitioner was found guilty for the aforesaid charges levelled against him. Thereafter, a memorandum was issued on 19.1.1990 placed at page 23, under which the petitioner was held to be guilty for the aforesaid charges and accordingly he was ordered to be dismissed without notice from the service of the bank with immediate effect. A copy of the aforesaid memorandum was sent to and served upon the petitioner who was placed under suspension, at the time when the charge-sheet was issued. Along with the said memorandum, copy of the report of the Inquiry Officer was also supplied. The said copy can be found at page 24 onwards.

6. Feeling aggrieved by the said dismissal order, the petitioner preferred departmental appeal, which came to be dismissed and the dismissal order has been placed at Annexure 48. Thereafter, the said order was reviewed under a review application and the same was turned down by the competent authority on 10.7.1991. Copy of the said communication has been placed at page 52 to the petition. Feeling aggrieved by the aforesaid decisions of the disciplinary authority as well as the appellate authority, the petitioner has preferred this petition before this Court.

7. It has been mainly contended by the petitioner that the entire proceedings of the departmental enquiry against him sought to be vitiated on account of the following irregularities committed by the respondents:

i. Non-supply of report of the Inquiry Officer.

ii. Non-supply of documents relied upon by the respondent Bank

iii. The order is not a speaking one

iv. Certain witnesses have not been examined

v. The findings of the Inquiry Officer are based on no-evidence

vi. The respondents acted with malafides

vii. The punishment inflicted is too harsh, considering the gravity of charges levelled against the petitioner

8. On the aforesaid considerations, it has been prayed that the present petition be allowed and the order of the disciplinary authority which is confirmed by the appellate and Reviewing Authority be quashed and set aside and the petitioner be reinstated to his original position with costs all throughout.

9. On receiving the petition, rule was issued. On behalf of the respondents, affidavit-in-reply of Mr S V Satyamurthy has been filed at page 53. He is shown as Dy.General Manager working in the Zonal Office, Baroda at the relevant point of time. He has also produced copy of the letter dated 5.7.1998 addressed by the Zonal Manager to the petitioner along with the said facts. I have heard Mr R N Shah, learned Advocate for the petitioner and Mrs P J Davawala, learned Advocate for the respondents. I have also perused the papers. Learned Advocate for the petitioner has heavily contested the issue of non-supply of the report of the Inquiry Officer. It has been strenuously argued by Mr R N Shah that it was incumbent on the part of the respondents to supply copy of the report of the Inquiry Officer to enable the petitioner to know as to what was the recommendation, in the report of the Inquiry Officer and how the decision was arrived at by the Inquiry Officer was incorrect and that could be shown by him only when the copy of the Inquiry Officer's report was supplied to him. That, non-supply of Inquiry Officer's report was, therefore, vitiated the enquiry against him. As against this, Mrs. P J Davawala has also argued at length that as per the rules of the respondents at the relevant point of time, it was not necessary for the respondents to supply copy of the report of the Inquiry Officer before imposing penalty and, therefore, non-supply of the said report to the petitioner was in accordance with the rules and when the rules have been followed, the question of principles of natural justice cannot come into play. That therefore, non-supply of this report would not vitiate the proceedings against the petitioner. In support of the said arguments, Mr R N Shah, learned Advocate for the petitioner has relied upon a decision in the case of Union of India v. Mohd Ramzan Khan (AIR 1991 SC 471). There, it has been laid down that when an Inquiry Officer records findings of guilt and proposing punishment, then the delinquent is entitled to know the same. It is based on the principle that the report of the Inquiry Officer is an additional material which is required to be considered by the disciplinary authority. That when the disciplinary authority is required to consider this additional material, then he cannot be permitted to consider the same behind the back of the delinquent and

therefore, it is necessary to supply copy of the report of the Inquiry Officer to the delinquent. At the same time, it is required to be considered that in the said judgment itself, the Hon'ble Supreme Court has clearly observed in para 17 that this shall have prospective application and no punishment imposed shall be open to challenge on this ground. This means that the Hon'ble Supreme Court has made it clear that the decision will have prospective effect and the decisions which have been rendered earlier are not required to be altered on the strength of this decision which was decided on 20.11.1990. In the present case, we find that the order in question has been passed as early as on 11.3.1988. Even the final order in review has also been concluded before 22.6.1990. Therefore, everything was concluded before the aforesaid judgment was pronounced by the Supreme Court. Considering the prospective effect of the said judgment, it is very clear that the said judgment will not apply to the facts of the case before us.

10. Even otherwise, in the case of Managing Director, ECIL v. B Karunakar (AIR 1994 SC 1075), the Supreme Court has again made it clear that the delinquent is entitled to a copy of the Inquiry Officer's report. But this direction will apply prospectively w.e.f. 20.11.1990, on which day Mohd.Ramzan Khan's case (supra) was decided. It is very clear from this decision that the requirement is prospective and in effect and since the present decision has been taken much earlier than the date of the decision of the said matter. The principle laid down in Ramzan Khan's case (supra) will, therefore, not be helpful to the petitioner. After going through these two judgments, Mr R N Shah, learned Advocate for the petitioner has also agreed that the principle laid down in Ramzan Khan's case (supra) will not apply to the facts of the present case.

11. The second contention raised relates to the non-supply of documents relied upon by the respondents against the petitioner. For this purpose, the petitioner has referred to the aforesaid letters addressed by the petitioner to the respondents seeking copies of documents and inspection thereof. They can be again referred at pages 17, 18, and 21. However, it is very clear that these prayers were made by the petitioners before the inquiry had actually commenced. Learned Advocate for the respondents has made it clear that as per the rules, the petitioner was not entitled to copies of documents at the time when the charge sheet was issued. It is also her argument that the copies of documents are required to be supplied at the time of commencement of the enquiry and

after submission of reply to the charge sheet. It is made clear by the respondents that before the actual commencement of the enquiry, the relevant documents have been supplied by the respondent to the petitioner and the petitioner had made absolutely no grievance with respect to the non-supply of documents at the stage of enquiry at the appeal or at the stage of review. She has also shown the minutes showing that there was no request made for supply of copies of documents at subsequent stages, as having already been supplied to the petitioner. If we go through the report of the Inquiry Officer, it is very clear that there is no stand taken by the petitioner that the documents have not been supplied. Similarly, the order in appeal also does not show that this was the contention raised on behalf of the petitioner before the appellate authority. Even before the reviewing authority, no such plea was taken. In above view of the matter, when the respondents have made it clear that the documents relied upon by the respondents have been supplied at the relevant point of time, I am of the view that there is no reason to disregard and disbelieve the said contention raised by the respondents at the relevant point of time. It is more so, when the report of the Inquiry Officer does not show that the petitioner had taken up a contention that the documents were not supplied to the petitioner. It is very clear that the respondents have filed affidavit of S V Satyamurthy at page 53 and in para 3 at page 54 and it has been made clear by the respondents that the petitioner has been supplied with all the documents and materials on which reliance was placed by the disciplinary authority, and therefore, the contention of the petitioner that he was not supplied with documents has no basis. Considering the aforesaid affidavit, I am of the view that it is consistent with the report of the Inquiry Officer and orders in appeal and review. Therefore, in my view, the petitioner has not been able to show that the documents relied upon by the respondents were not supplied to him. Therefore, this point would not help the petitioner.

12. Another aspect of the case is that the learned Advocate for the petitioner has argued that the order passed by the petitioner is not a speaking one. A perusal of the said order shows that the disciplinary authority has accepted the report of the Inquiry Officer in full. After all the disciplinary authority is an Administrative Officer and he is not required to render elaborate judgment with full discussion, when he has accepted the report of the Inquiry Officer and when the Inquiry Officer has rendered a detailed report, after considering the documentary and oral evidence produced

before him. I am of the view that the enquiry proceedings will not stand vitiated if the disciplinary authority does not render elaborate judgment with detailed discussion. The said memorandum dated 19.1.1990 is placed at page 23, wherein it has been made clear that the disciplinary authority concurred with the finding of the inquiring authority on the charges framed and proved against the petitioner. Therefore, it is clear that the findings of the Inquiry Officer have been accepted by the disciplinary authority and, therefore, simply because the detailed and elaborate discussion has not been made in that memorandum, the proceedings will not stand vitiated. Therefore, even this plea cannot come to the rescue of the petitioner.

13. It is then contended by Mr R N Shah, learned Advocate for the petitioner that certain witnesses have been dropped and they have not been examined. It cannot be disputed that all the witnesses have not been examined. However, they are the officers of the regional office. When the other witnesses have been able to prove the case against the petitioner, it would not be necessary for the respondents to examine the remaining witnesses also. It is said that evidence is required to be weighed and not counted. Mr R N Shah, learned Advocate has argued on this point that if the officers from the regional office or Zonal office had been examined, the petitioner could show from their evidence that the petitioner had obtained consent or directions from them for disbursement of the loan. It is nowhere pleaded by the petitioner that he had approached the Regional or Zonal office for the above purpose and there was oral or written communication received from those offices for the disbursement of those loans. No such dispute was raised before the Inquiry Officer and there was no such dispute before the disciplinary, appellate authority or reviewing authority. Even the affidavit of the petitioner does not disclose this fact. In that view of the matter, it would not be open for the petitioner, for the first time, to plead before this court and that too at the stage of argument that there was such oral communication from the zonal or Regional office and that the petitioner could have brought on record that there was some communication received from the Zonal Office or Regional Office. Even if we take it that the petitioner had received such communication, then the petitioner could have filed additional affidavit naming the officers and the offices from whom such direction was received by him. In absence of any material on record, it cannot be said that the petitioner could not avail of the aforesaid opportunity to prove the said fact. In fact there was no

such plea raised by the petitioner and at any point of time. Even during the course of enquiry, the petitioner was at liberty to raise the said issue and request the department to examine those witnesses. If the department did not examine the witnesses despite the request of the petitioner, then the petitioner could, himself examine the said witnesses. At least the petitioner could have brought this fact on record that there was some oral or written communication received from the Zonal or the Regional office. In absence of any such plea being raised by the petitioner at any point of time, it is not open now to the petitioner to argue the said issue for the first time at the stage of argument without pleadings and without any affidavit. Therefore, this plea cannot help the petitioner.

14. It has, next, been contended that the finding of the inquiry Officer are perverse. For this purpose, copies of depositions of the witnesses have not been brought on record. However, learned Advocate for the petitioner has referred to certain observations made by the Inquiry Officer during the course of his report submitted to the disciplinary authority. In fact, the witnesses before the said officer, have given detailed versions as to how the loans were disbursed.

15. Mr J P Desai was working as Branch Manager just before the petitioner took over. This officer was there upto 12.10.1987 and the loan was disbursed on 13.10.1987. Therefore, this officer was very much conversant with the handwritings of the persons working in the branch and, therefore, he was in a position to prove all the relevant documents, which were available in the Branch at the relevant point of time. Moreover, it is an admitted position that the loans were disbursed on 13.10.1987 and the applications were received on 12.10.1987. It is not much in dispute that no process was undertaken, the higher offices were not taken into confidence and the required procedure was not followed. Therefore, Mr J P Desai was in a position to give details as to how the loans were disbursed and what were the irregularities committed by the petitioner in sanctioning the loan etc. It is more so, when Mr Desai, according to his evidence, was working in the said Branch as Manager for about 4 years. He has very clearly deposed at the enquiry that on the same day, i.e. on 13.10.1987, proposals were placed before the petitioner and they were sanctioned without any process or procedure being followed by him. He has also verified the record and after verification, he has deposed that the aforesaid amounts were paid from the bank's account. Other details have been given by

this witness and by other witnesses.

16. Even otherwise, the facts are not at all in dispute even before this court. Admittedly, no procedure was followed, higher offices were not taken into confidence, verification was not undertaken, identity of the persons taking loans was not obtained suitability of cases and advisability or desirability to advance loans etc. was nota considered, and without following a single process or procedure, the loans were advanced and actually paid to those persons to whom the loans were advanced as enlisted in the list produced at page 16 to the petition. There are 15 persons named in the said list, each one was paid Rs.30,000/- and there is absolutely no dispute about the same. Necessary witnesses were examined and documents were also produced before the Inquiry Officer. Therefore, the factual aspects were proved before the enquiry authority and the Inquiry Officer has held that the charges against the petitioner have been proved. They are based on factual aspect. It, therefore, cannot be said that there was absolutely no evidence or material before the Inquiry Officer or before the disciplinary authority and yet adverse report was submitted against the petitioner. It, therefore, cannot be said that the Inquiry Officer arrived at wrong findings without any material evidence. It is to be seen that so far as the evidence is concerned, this Court is not sitting as court of appeal over the decision of the disciplinary authority. Therefore, it is not open for this court to reappreciate the evidence. This court also cannot controvert the findings of fact, Moreover, this is not a criminal proceedings, in which the guilt is required to be proved beyond reasonable doubt. If there is some evidence, the disciplinary authority can depend upon it. The only point which can help the delinquent is that if there is no case of no evidence, then in that case only the court can interfere. The court cannot enter into the question of sufficiency of evidence. The rule of the Evidence Act does not apply to the departmental proceedings. In the present case, considering the report of the Inquiry Officer and considering the discussions undertaken by him with respect to the oral and documentary evidence, it cannot be said that it is a case of no evidence and therefore, the findings of the Inquiry Officer cannot be assailed on the aforesaid aspect of the case. Therefore, even this point does not help the petitioner.

17. It has also been submitted that the respondents have acted with malafide intention. After all the petitioner had a long tenure in service with the

respondent bank and there is no material on record to show that the disciplinary authority, enquiry authority, appellate authority or the reviewing authority had any grudge against the petitioner. In that view of the matter, there is absolutely no material to hold that the respondents have acted in malafide exercise of powers. No specific allegations were made in this regard. The records do not disclose any material to justify this allegation of malafides. Therefore, it cannot be said that there was malafide on the part of the respondents in taking decision against the petitioner.

18. Learned Advocate for the petitioner has relied upon a decision in the case of State of U P v. Shatrughan Lal (AIR 1998 SC 3038), wherein it has been laid down that the copies of documents indicated to be relied upon in charge-sheet, were required to be supplied and non-supply of such documents would vitiate the proceedings.

18.1. The second decision relied upon is in the case of Balbir Vasisht v. National Textile Corporation (Gujarat) Ltd.,(2000(3) GLR 2191, wherein it has been laid down that non-supply of documents would violate the principles of natural justice. Another decision in the case of G A Patel v. State of Gujarat (1991(2) GLR 937) was also relied upon. Again it was argued that the petitioner was entitled to copy of the report of the Inquiry Officer as per this decision. As said above, the case of Mohmad Ramzan Khan's case (supra) has prospective effect and therefore, it cannot be said that because of this decision, the petitioner would again be entitled to get copy of the enquiry report and therefore, these decisions, in my opinion, will not help the present petitioner.

18.2. Another decision relating to speaking order has been shown from the case of State of Gujarat v. Suryakant Chunilal Shah (1999(1) GLH 803. As said above, the foundation is the report of Inquiry Officer and that has been fully accepted by the disciplinary authority and therefore, it was not necessary to have detailed and elaborate judgment holding the petitioner guilty. Hence this decision also does not help the petitioner.

19. The learned Advocate for the petitioner has taken me through the entire report of the Inquiry Officer, wherein the evidence of the department has been discussed at length. However, on proper examination of this report with his assistance, I am of a clear opinion that the Inquiry Officer has recorded findings on the charges

levelled against the petitioner. He has fully and properly scrutinized the relevant material before him. Reasonable opportunity was afforded to the petitioner during the course of inquiry. There was no procedural defect at any stage. The inquiry proceedings and findings are quite according to rules and even the principles of natural justice have been observed.

20. Mr R N Shah has lastly argued that the punishment imposed is too harsh. It has been contended that the petitioner had a long tenure in service, that he has not pocketed any amount, that there was no dishonesty on the part of the petitioner, that the petitioner was placed under suspension for a very long time, the petitioner has three daughters. That, it is to be kept in mind that no loss has been caused to the bank, that the full amount advanced as aforesaid to the aforesaid persons has been repaid and therefore, no monetary loss has been caused to the bank. That these aspects have not been considered and, therefore, the punishment of dismissal is very harsh.

21. If we go through the order of the disciplinary authority, it is quite clear that the disciplinary authority has simply referred the report of the Inquiry Officer and has passed the order of dismissal. It appears that no reason has been mentioned in the order as to why the disciplinary authority selected penalty of dismissal against the petitioner. Rules show that other penalties could also be imposed. This can be gathered from Rule (4) which provides for minor and major penalties. They can be enlisted as follows:

"Minor Penalties

(a) censure
(b) Withholding of increments of pay with or without cumulative effect
(c) withholding of promotion
(d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the bank by negligence or breach of orders.

Major penalties

(e) reduction to a lower grade or post or to a lower stage in a time scale.
(f) compulsory retirement
(g) removal from service which shall not be a

disqualification for future employment.

(h) dismissal, which shall ordinarily be a disqualification for future employment."

This shows that dismissal is the extreme penalty, which could be imposed on the delinquent.

22. It is very clear that the disciplinary authority is required to consider the pros and cons with respect to the quantum of punishment to be inflicted upon the delinquent on the charges proved against the person concerned. On this aspect of the case, it would be useful to refer to a decision in the case of Yakub Ahmed Patel v. Ahmedabad Municipal Corporation & Anr (1997 (1) GLH 591). There, the dismissal resulted for negligence in duty by an employee who was in service for 32 years. He had seven years to serve before retirement. There it has been held that the penalty of dismissal was harsh and disproportionate to the charge of negligence and the dismissal was converted into compulsory retirement to avail the employee of retiral benefits for his long service. Another decision of this Court can be seen from the case of Narayan S Shinde v. Union of India & Ors. (1997 (1) GLH 664. There also, disciplinary proceedings resulted into dismissal from service on the ground of negligence in duty. There the delinquent had an unblemished past service record and, therefore, penalty of dismissal was held to be disproportionate. The matter was remanded back to the appellate authority to decide what appropriate penalty should be given to the petitioner for proved negligence.

23. The learned Advocate for the respondents has argued at length that this Court is not sitting as a Court of Appeal, and therefore, the question of quantum of punishment cannot be re-opened in this petition, when the court is exercising its power under Article 226 of the Constitution of India. It is very clear that ordinarily, this Court does not interfere with the quantum of punishment. However, if it is found that a particular punishment shocks the conscience of the Court, then it can certainly interfere with the quantum of punishment. In the present case, we find that there is almost total non-application of mind with respect to the quantum of punishment. The disciplinary authority has not pointed out even by a single sentence as to why the penalty of dismissal has been selected. The authorities were also required to consider that there was no loss caused to the bank as the entire amount was repaid by the persons concerned. Then there is no finding that there

was dishonest intention or dishonest act on the part of the petitioner at any point of time. It is not the case of the department that the petitioner had pocketed some amount after advancing the loan to the aforesaid persons. Even the past record of the petitioner required consideration. It is nobody's case that the petitioner had committed some faults in the past. Therefore, it was not just and proper to ignore the past record. In absence of adverse past record, the petitioner could not have been lightly dismissed from the service on the aforesaid charges. Considering the facts and circumstances of the case and looking to the fact that there was no allegation or finding about dishonesty on the part of the petitioner and when there was no loss caused to the bank on account of the misdoing on the part of the petitioner and looking to the fact that there was no past adverse record against the petitioner and considering the length of service of the petitioner, I am of the view that these aspects were required to be properly considered and I find that the disciplinary authority, the appellate authority and the reviewing authority all of them failed in properly considering these aspects of the case while selecting punishment of dismissing the petitioner. Therefore, I quite agree with the finding of the Inquiry Officer that the petitioner was guilty of the charges levelled against him. At the same time, I find the penalty imposed is not in proportion to the charges levelled against the petitioner and considering the above referred aspects of the case, the petitioner should have been awarded a lighter punishment than the punishment of dismissal.

24. It is a matter of discretion to select a particular punishment to be imposed having regard to the facts and circumstances, the charge proved against a delinquent, his past records etc. In that view of the matter, I am of the opinion that it would be in the fitness of things to leave the question of quantum of punishment to the discretion of the reviewing authority. This can be done by allowing the petition and by remanding the matter to the reviewing authority for taking appropriate decision with respect to the quantum of punishment. For this purpose, the order in question is required to be quashed and the petitioner is required to be reinstated. At the same time, it is a fact that the petitioner was under suspension till the date of dismissal. Therefore, even if the petitioner is reinstated, the effective reinstatement should be with prospective effect. Considering the misdoings of the petitioner, in my view, the petitioner should not get any

backwages also, since there is no work done by him for all these years. At the same time, notional pay of the petitioner would be required to be fixed on the date of dismissal and there should be subsequent calculation of his pay and allowances, including periodical increments admissible to him as per the rules and regulations of the bank and actual payment of salary and allowance would be required to be made to the petitioner from the date of actual reinstatement.

25. In the aforesaid view of the matter, this petition is partly allowed. The findings of the Inquiry Officer and of the disciplinary authority, holding the petitioner guilty for the charges levelled against him are not disturbed. However, the order passed by the disciplinary authority dismissing the petitioner from the service of the respondent bank dated 19.1.1990 at page 23, and confirmed in appeal and in review referred to hereinabove, are quashed and set aside. The matter is remanded to the reviewing authority i.e. General Manager (C & C) of the respondent Bank for passing appropriate order with respect to the quantum of punishment. The said authority shall be at liberty to decide and impose any penalty upon the petitioner except the penalty of dismissal, removal or termination of service. It would be open to the said authority to consider the period between the date of dismissal and the date of actual reinstatement as 'leave without pay'. In any case, the petitioner shall be reinstated in his original cadre and he shall be appropriately appointed in the same cadre at any place on or before 1.1.2001. The petitioner shall not be entitled to salary or other allowances between the date of dismissal and the date of actual effective reinstatement. However, as said above, his pay shall be notionally fixed as on the date of dismissal and it shall be calculated from year to year and it shall be decided as to what would be his salary and allowances payable to the petitioner on the date of his actual reinstatement. The petitioner shall be paid pay and allowances accordingly with effect from the actual date of reinstatement. In the facts and circumstances of the case, there shall be no order as to costs. Rule is made absolute accordingly.

8.12.2000 [D P Buch,J,]
msp

FURTHER ORDER

Mrs. Davawala, Learned Advocate appearing for the respondents prays for stay of the operation of this

order upto 1.2.2001. Mr R N Shah, learned Advocate appearing for the petitioner makes a statement that the petitioner will not file any procedings for implementation of this order upto 1.2.2001. In that case, no further order is required to be passed.

8.12.2000 [D P Buch, J.